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**DEPARTMENT OF AGRICULTURE**

**Rural Business-Cooperative Service**

**Rural Utilities Service**

**7 CFR Part 4279**

**RIN 0570-AA85**

**Guaranteed Loanmaking and Servicing Regulations;  
Corrections**

**AGENCIES:** Rural Business-Cooperative Service and Rural Utilities Service; USDA.

**ACTION:** Final rule; technical correction.

**SUMMARY:** On June 3, 2016, the Rural Business-Cooperative Service promulgated changes to its Guaranteed Loanmaking and Servicing Regulations. Following final implementation of this final rule, RBS found two technical corrections that are necessary.

**DATES:** Effective [Insert date of publication in the **Federal Register**].

**FOR FURTHER INFORMATION CONTACT:** Kelley Oehler, Rural Development, Business Programs, U.S. Department of Agriculture, 1400 Independence Ave., SW, Stop 3224, Washington, DC, 20250-3224; email: kelley.oehler@wdc.usda.gov; telephone number: (202) 720-1418.

**SUPPLEMENTARY INFORMATION:**

**Need for Corrections**

The Agency published a final rule on June 3, 2016, (81 FR 35984 - 36027) for the purpose of improving program delivery, clarifying the regulations to make them easier to understand, and reducing delinquencies.

This document makes technical corrections to the Business and Industry (B&I) Guaranteed Loan regulations in two areas: full faith and credit and leasehold improvements.

Full faith and credit. In § 4279.72(a), Full faith and credit, the Agency identifies in the second, third, and fourth sentences circumstances under which the guarantee is unenforceable in whole or in part. In all circumstances, the guarantee is unenforceable by the lender. However, the rule identifies "by the lender" in the third sentence, but not in the second or fourth sentence. To correct this

oversight and provide clarity, the Agency is revising the second and fourth sentences to include the phrase "by the lender."

Leasehold improvements. The B&I Guaranteed Loan Program rule specifically identifies, in § 4279.113, certain leasehold improvements as an eligible project purpose for a B&I loan guarantee. However, there are other provisions in the B&I Guaranteed Loan Program rule that are inconsistent with and undermine this intent. Specifically, the rule relies on the definition of "leasehold improvements" as found in General Acceptable Accounting Practices (GAAP) (see § 4279.2(c)). GAAP considers leasehold improvements to be "intangible assets." Provisions in the B&I rule regarding intangible assets in the calculation of tangible balance sheet equity (see § 4279.131(d)(2)) and the prohibition of intangible assets from serving as primary collateral (see § 4279.131(b)(3)) make it unintentionally difficult for leasehold improvement projects to meet equity and collateral requirements. Therefore, with this document, the Agency is correcting those provisions of the B&I Guaranteed Loan Program rule that are preventing leasehold improvement projects from meeting equity and collateral requirements for a B&I loan guarantee.

**List of Subjects in 7 CFR Part 4279**

Loan programs—Business and industry, Reporting and recordkeeping requirements, Rural areas.

Accordingly, 7 CFR chapter XLII is amended by making the following correcting amendments:

**PART 4279 - GUARANTEED LOAN MAKING**

1. The authority citation for part 4279 continues to read as follows:

**Authority:** 5 U.S.C. 301; and 7 U.S.C. 1989.

**Subpart A - General**

2. Revise the second and fourth sentences of § 4279.72(a) introductory text to read as follows:

**§ 4279.72 Conditions of guarantee.**

\* \* \* \* \*

(a) \* \* \* The guarantee will be unenforceable by the lender to the extent that any loss is occasioned by a provision for interest on interest or default or penalty interest. \* \* \* Any losses occasioned will be unenforceable by the lender to the extent that loan funds were used for purposes other than those specifically approved by the Agency in its Conditional Commitment or amendment thereof

in accordance with § 4279.173(b). \* \* \*

\* \* \* \* \*

**Subpart B - Business and Industry Loans**

3. Amend § 4279.131 as follows:

a. Add a sentence to the end of paragraph (b) (3); and

b. Revise the first and fourth sentences in paragraph (d) (2).

The addition and revisions read as follows:

**§ 4279.131 Credit quality.**

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \* For purposes of determining compliance with this requirement, leasehold improvements are considered tangible assets and can serve as primary collateral.

\* \* \* \* \*

(d) \* \* \*

(2) Tangible balance sheet equity will be determined based upon financial statements prepared in accordance with GAAP except that, for the purposes of this subpart, leasehold improvements are to be considered tangible assets when making the tangible balance sheet equity calculation.

\* \* \* Tangible equity cannot include appraisal surplus,

bargain purchase gains, or intangible assets (except for  
leasehold improvements). \* \* \*

\* \* \* \* \*

Dated: March 8, 2018.

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Rural Business-Cooperative Service.

Dated: March 8, 2018.

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[FR Doc. 2018-05319 Filed: 3/15/2018 8:45 am; Publication Date: 3/16/2018]